

111TH CONGRESS
2D SESSION

S. 3499

To amend title 38, United States Code, to require fiduciaries of individuals receiving benefits under laws administered by the Secretary of Veterans Affairs to authorize the Secretary to obtain financial records with respect to such individuals for purposes of administering such laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2010

Mr. AKAKA introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to require fiduciaries of individuals receiving benefits under laws administered by the Secretary of Veterans Affairs to authorize the Secretary to obtain financial records with respect to such individuals for purposes of administering such laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fiduciary Benefits
5 Oversight Act of 2010”.

1 **SEC. 2. ACCESS BY SECRETARY OF VETERANS AFFAIRS TO**
2 **FINANCIAL RECORDS OF INDIVIDUALS REP-**
3 **RESENTED BY FIDUCIARIES AND RECEIVING**
4 **BENEFITS UNDER LAWS ADMINISTERED BY**
5 **SECRETARY.**

6 Section 5502 of title 38, United States Code, is
7 amended by adding at the end the following new sub-
8 section:

9 “(f)(1) The Secretary may require any person ap-
10 pointed or recognized as a fiduciary for a Department ben-
11 eficiary under this section to provide authorization for the
12 Secretary to obtain (subject to the cost reimbursement re-
13 quirements of section 1115(a) of the Right to Financial
14 Privacy Act of 1978 (12 U.S.C. 3415)) from any financial
15 institution any financial record held by the institution with
16 respect to the fiduciary or the beneficiary whenever the
17 Secretary determines that the financial record is nec-
18 essary—

19 “(A) for the administration of a program ad-
20 ministered by the Secretary; or

21 “(B) in order to safeguard the beneficiary’s
22 benefits against neglect, misappropriation, misuse,
23 embezzlement, or fraud.

24 “(2) Notwithstanding section 1104(a)(1) of such Act
25 (12 U.S.C. 3404(a)(1)), an authorization provided by a

1 fiduciary under paragraph (1) with respect to a bene-
2 ficiary shall remain effective until the earliest of—

3 “(A) the approval by a court or the Secretary
4 of a final accounting of payment of benefits under
5 any law administered by the Secretary to a fiduciary
6 on behalf of such beneficiary;

7 “(B) in the absence of any evidence of neglect,
8 misappropriation, misuse, embezzlement, or fraud,
9 the express revocation by the fiduciary of the au-
10 thorization in a written notification to the Secretary;
11 or

12 “(C) the date that is three years after the date
13 of the authorization.

14 “(3)(A) An authorization obtained by the Secretary
15 pursuant to this subsection shall be considered to meet
16 the requirements of the Right to Financial Privacy Act
17 of 1978 (12 U.S.C. 3401 et seq.) for purposes of section
18 1103(a) of such Act (12 U.S.C. 3403(a)), and need not
19 be furnished to the financial institution, notwithstanding
20 section 1104(a) of such Act (12 U.S.C. 3404(a)), if the
21 Secretary provides a copy of the authorization to the fi-
22 nancial institution.

23 “(B) The certification requirements of section
24 1103(b) of such Act (12 U.S.C. 3403(b)) shall not apply

1 to requests by the Secretary pursuant to an authorization
2 provided under this subsection.

3 “(C) A request for a financial record by the Secretary
4 pursuant to an authorization provided by a fiduciary
5 under this subsection is deemed to meet the requirements
6 of section 1104(a)(3) of such Act (12 U.S.C. 3404(a)(3))
7 and the matter in section 1102 of such Act (12 U.S.C.
8 3402) that precedes paragraph (1) of such section if such
9 request identifies the fiduciary and the beneficiary con-
10 cerned.

11 “(D) The Secretary shall inform any person who pro-
12 vides authorization under this subsection of the duration
13 and scope of the authorization.

14 “(E) If a fiduciary of a Department beneficiary re-
15 fuses to provide, or revokes, any authorization to permit
16 the Secretary to obtain from any financial institution any
17 financial record concerning benefits paid by the Secretary
18 for such beneficiary, the Secretary may, on that basis, re-
19 voke the appointment or the recognition of the fiduciary
20 for such beneficiary and for any other Department bene-
21 ficiary for whom such fiduciary has been appointed or rec-
22 ognized. If the appointment or recognition of a fiduciary
23 is revoked, benefits may be paid as provided in subsection
24 (d).

1 “(4) For purposes of section 1113(d) of such Act (12
2 U.S.C. 3413(d)), a disclosure pursuant to this subsection
3 shall be considered a disclosure pursuant to a Federal
4 statute.

5 “(5) In this subsection:

6 “(A) The term ‘fiduciary’ includes any person
7 appointed or recognized to receive payment of bene-
8 fits under any law administered by the Secretary on
9 behalf of a Department beneficiary.

10 “(B) The term ‘financial institution’ has the
11 meaning given such term in section 1101 of such
12 Act (12 U.S.C. 3401), except that such term shall
13 also include any benefit association, insurance com-
14 pany, safe deposit company, money market mutual
15 fund, or similar entity authorized to do business in
16 any State.

17 “(C) The term ‘financial record’ has the mean-
18 ing given such term in such section.”.

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